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Supreme Court of the United States

October Term, 1962

No. 28

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SUPREME COURT, U.S.

FRANCESCO FOTI a/k/a FRANK FOTI,

Appellant,

—vs.—

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

APPELLANT'S BRIEF

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Preliminary Statement

This appeal is predicated upon the sole issue granted in the petition for certiorari before this court; the said petition having been filed October 20, 1962, and the Certiorari having been granted January 7, 1963.

Issue

Whether or not the Circuit Court of Appeals has jurisdiction to review the final orders of the Special Inquiry Officer authorized by the Attorney General to be made during the course of deportation proceedings?

ARGUMENT

I

The Circuit Court of Appeals has jurisdiction to review final orders of the Special Inquiry Officer.

It is respectfully submitted that Congress pursuant to Public Law 87-301 included in Section 5(a) the power to review all final orders made by the Special Inquiry Officer of the Immigration and Naturalization Service, a division of the Attorney General's Department. That section amended the Immigration and Nationality Act by adding to it a new section 106 entitled "Judicial Review of Orders of Deportation and Exclusion", 8 U.S.C.A. (1962 Pocket Part) §1105a.

The said section 1105a provides the procedural steps and all the provisions of 5 USC §§1031-1042 "shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the limits of the United States pursuant to administrative proceedings under section 242(b) of this Act, (8 USC §1252(b)) or comparable provisions of any prior act". This present matter is without the nine special exceptions cited in the said 5 USC §§1031-1042.

There have been a number of decisions upholding the jurisdiction of the Court of Appeals, such as *Blagaic* v. *Flagg*, Seventh Circuit, 304 F. 2nd 623 (1962) and in the same circuit, *Roumeliotis* v. *I.N.S.*, 304 F. 2nd 453 (1962), and in the latter case the attorney-general's objections were overruled.

However, Mr. Justice Edelstein in the matter of *Zupicich* v. *Esperdy*, S. D. N. Y., 61 Civ. 1271, filed July 12th, 1962, whose opinion referred to two decisions arrived at in the ninth circuit, *Giova* v. *Rosenberg*, No. 17,655, June 15, 1962, and *Mai Fai Fong* v. *Immigration and Naturalization Service*, 17, 723, June 28, 1962, whereby jurisdiction was upheld, stated in his *Zupicich* case (cited *supra*) that the court of appeals had jurisdiction.

It is respectfully submitted in the Seventh and Ninth Circuits the Court of Appeals have upheld the jurisdiction pursuant to the new congressional enactment. The lower court in the Second Circuit has stated that jurisdiction properly appertains to the court of appeals. The history of the case at bar reflects the said attitude of the District Court in the Second Circuit. Predicated upon such authorities and legislative enactment it is inescapable that the court of appeals has jurisdiction.

II

Conclusion

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed and the cause remanded to the court of appeals for a review.

Respectfully submitted,

CALLY & CALLY
Attorneys for Appellant